

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07  
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15  
USIA-06 IO-13 ACDA-07 OES-07 DLOS-09 TRSE-00 /094 W  
-----112969 281656Z /47

R 281455Z JUN 77  
FM USMISSION USBERLIN  
TO SECSTATE WASHDC 4824  
INFO AMEMBASSY BERLIN UNN  
AMEMBASSY BONN  
AEMBASSY BRUSSELS 1812  
AMEMBASSY LONDON  
AMEMBASSY PARIS  
AMEMBASSY MOSCOW  
USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1715

E.O.11652: GDS  
TAGS: PGOV, EEC, FR, GE, GW, UR, US, UK, WB  
SUBJECT: EC/SOVIET FISHERIES NEGOTIATIONS: BERLIN AND THE  
TERRITORIAL CLAUSE

REF: (A) BONN 10485, (B) BRUSSELS 5673, (C) BONN 8550

1. SUMMARY: REFTEL A SHOW THE VIRTUE OF OUR HAVING  
ESCHEWED UP TO NOW MAJOR INVOLVEMENT IN THE INTRA-  
EC COLLOQUY ON THE TERRITORIAL CLAUSE. OUR COMMENTS  
BELOW CONVEY OUR ANALYSIS THAT OUR ALLIES WITH ASSISTANCE  
FROM THE SOVIETS, APPEAR TO BE TRAPPED IN AN ELLIPTICAL  
ORBIT ON THE QUESTION. WE BELIEVE THESE EVENTS DEMONSTRATE  
THAT WHILE THE US CAN AND SHOULD DEFER TO THE THREE  
OTHER BONN GROUP REPS IN INITIATING APPROACHES TO EC-  
BERLIN ISSUES, THE US MUST PLAY, AT SOME POINT, AN  
ACTIVE ROLE IN DEVELOPING SUCH APPROACHES. IN OUR  
OPINION, THAT POINT SHOULD ALWAYS OCCUR BEFORE THE  
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EC, AND/OR THE THREE OTHER BONN GROUP MEMBERS HAVE  
REACHED INTERNAL AGREEMENT. END SUMMARY.

2. WE NOTE WITH INTEREST THE TWO PROPOSED TEXTS (THE  
ORIGINALLY PROPOSED AND THE FRENCH TEXT) OF ARTICLE 10,  
THE TERRITORIAL CLAUSE, REPORTED REFTEL A. EITHER,  
IN OUR VIEW, WOULD BE SATISFACTORY. WE ASSUME THAT

THE FRENCH CONSIDER THEIR TEXT WOULD BE MORE ACCEPTABLE TO THE SOVIETS THAN THE ORIGINAL. WE SUSPECT THIS WOULD NOT BE THE CASE. IN THE ORIGINAL PROPOSAL, APPLICATION OF THE AGREEMENT TO BERLIN IS IMPLIED BY THE WORDS "THE PRESENT AGREEMENT SHALL APPLY TO THE TERRITORIES WITHIN WHICH THE TREATY ESTABLISHING THE EEC IS APPLIED". THE FRENCH PROPOSAL CONTAINS AN ADDITIONAL ELEMENT. IT STATES THAT THE EC HAS "COMPETENCE" IN THIS AREA OF APPLICATION; I.E. "COMPETENCE", BY IMPLICATION, IN BERLIN. THE SOVIETS CANNOT CHANGE THE REALITY THAT THE TREATY OF ROME IS APPLIED IN BERLIN; BUT THEY CAN QUESTION AND REFUSE TO ACKNOWLEDGE THE EC'S "COMPETENCE" IN BERLIN. THIS IS MERELY TO SAY THAT WHILE WE DON'T KNOW YET WHETHER THE SOVIETS WILL ACCEPT ANY TERRITORIAL CLAUSE, THE FRENCH TEXT SEEMS FURTHER REMOVED THAN THE ORIGINAL PROPOSAL FROM THE SOVIET LEGAL POSITION ON BERLIN.

3. WE ARE ALSO INTRIGUED BY THE SOVIET OBJECTION, REPORTED PARAS 3 AND 4 REFTEL A, TO THE CLAUSE IN THE ORIGINAL PROPOSAL "AND UNDER THE CONDITIONS LAID DOWN IN THAT TREATY". THE STATED GROUNDS OF THEIR OBJECTION IS THAT THE TREATY OF ROME REFERS TO "LAND BERLIN". WE NOTE THAT, IN ACTUALITY, "LAND BERLIN" DOES NOT APPEAR IN THE TREATY OF ROME, BUT IN THE FRG INSTRUMENT OF RATIFICATION. EVEN THOUGH WE DO NOT

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KNOW THE PRECISE EC PURPOSE BEHIND THIS CLAUSE, WE FIND THE SOVIET COMMENT PECULIAR. EVEN IF "LAND BERLIN" RATHER THAN THE SOVIET PREFERRED "BERLIN (WEST)" FIGURED IN THE TEXT OF THE TREATY OF ROME, THE ISSUE WOULD BE ONE OF TERMINOLOGY RATHER THAN CONDITIONS. THE CLAUSE TO WHICH THE SOVIETS OBJECTED DOES NOT REFER TO THE "TERMS" OF THE TREATY OF ROME. WE SUSPECT, THEREFORE, THAT THIS IS ANOTHER FORM OF SOVIET OBJECTION TO APPLICATION OF THE TREATY TO BERLIN, AND NOT AN OBJECTION TO THE MANNER IN WHICH BERLIN IS NAMED. UNDOUBTEDLY THE CLAUSE SERVES AN EC PURPOSE; HOWEVER, IT DOES NOT APPEAR TO BE NECESSARY FOR OUR BERLIN PURPOSES. OUR CONCERN IS THAT IT NOT BE DELETED FOR INAPPLICABLE REASONS THEREBY GIVING RISE TO A NEGOTIATING HISTORY WHICH WOULD GIVE FUEL TO FUTURE SOVIET OBJECTIONS OR POSITIONS ADVERSE TO OURS.

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USIA-06 IO-13 ACDA-07 OES-07 DLOS-09 TRSE-00 /094 W  
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AMEMBASSY MOSCOW  
USMISSION NATO

C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 1715

4. THE BRITISH SUGGESTION FOR ADDITION OF THE PHRASE  
"AND OTHER APPLICABLE AGREEMENTS" AFTER THE SECOND USE  
OF "TREATY" IN THE ORIGINAL PROPOSAL STRIKES US AS  
UNWISE. THE BRITISH WOULD INTEND THIS AS AN OBLIQUE  
REFERENCE TO THE QUADRIpartite AGREEMENT (QA) OF  
1971. THE REFERENCE WOULD BE OBLIQUE INDEED SINCE THE  
EC IS NOT A PARTY TO THE QA, AND IS NOT EXPRESSLY  
MENTIONED IN IT. THE SOVIETS COULD READILY ARGUE,  
IF THE EC NEGOTIATORS WERE TO STATE THAT THE QA IS  
COVERED BY THIS CLAUSE, THAT THE EC AS A NON-PARTY  
TO THE QA HAS NO BUSINESS CITING IT IN A BILATERAL  
AGREEMENT WITH A QA SIGNATORY. WE UNDOUBTEDLY WOULD TAKE A  
COMPARABLE POSITION; IN PRINCIPLE, WERE  
WE TO BE CONFRONTED BY A NON-PARTY STATE WHO WISHED  
TO CITE "CONDITIONS LAID DOWN IN THE ... QA" IN A  
BILATERAL TREATY WITH US. THE CITATION, ITSELF,  
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IMPLIES THE COMPETENCE TO OFFER INTERPRETATIONS OF  
THE AGREEMENT. OUR POSITION IS FIRM THAT ONLY THE  
FOUR POWERS CAN DO SO. WE ALSO BELIEVE A REFERENCE TO  
THE QA IS UNWISE BECAUSE IT DOES NOT ADD ANYTHING

IN DESCRIBING THE EC RELATIONSHIP WITH BERLIN; AND, IN CONTRAST, IT FALLS INTO THE SOVIET TRAP OF REFERRING TO THE QA AS IF THE QA WERE THE DOCUMENT FROM WHICH FOUR POWER RIGHTS AND RESPONSIBILITIES AND THE STATUS OF BERLIN EMANATE. IN SHORT, THE TREATY OF ROME WAS EXTENDED TO BERLIN BY ACTION OF THE ALLIED KOMMANDATURA, NOT BY THE QA. THE QA DOES NOT "LAY DOWN" CONDITIONS FOR THE APPLICATION OF EC TREATIES IN BERLIN. FROM OUR PERSPECTIVE, THE QA CAN BE READ AS CONFIRMING THE LEGALITY OF THE EC-BERLIN RELATIONSHIP; BUT, OF COURSE, THE SOVIETS WOULD ARGUE THAT THE QA IS NOT APPLICABLE TO POST-1971 EC DEVELOPMENTS.

5. USBER REALIZES THAT AT THIS STAGE WE ARE LETTING THE OTHER THREE BONN GROUP REPS FIGHT IT OUT, AND DO NOT PLAN TO INTERVENE UNLESS A STALEMATE DEVELOPS. EVEN ABSENT A STALEMATE, HOWEVER, USBER BELIEVES WE SHOULD NOT BE COMPLETELY PASSIVE. WE BELIEVE THAT WHERE BERLIN IS CONCERNED, THE US HAS A RIGHT AND A RESPONSIBILITY TO INVOLVE ITSELF IN EC MATTERS. WITH THAT IN MIND, THIS MESSAGE OFFERS SOME THOUGHTS WHICH OUR BONN GROUP REP MAY FIND USEFUL. GEORGE

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## Message Attributes

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**Channel Indicators:** n/a  
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**Copy:** SINGLE  
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**Decaption Note:**  
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**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
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**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
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**SAS ID:** 2275141  
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**Status:** NATIVE  
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**TAGS:** PGOV, FR, GC, GE, UR, US, UK, WB, EEC  
**To:** STATE  
**Type:** TE  
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**Review Markings:**  
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